Such actions are prosecuted to redress wrongs done to the State, and the penalties appear to be imposed as exemplary damages for the public tort.[15] This would seem to be the essential nature of the proceedings and judgment in *quo warranto*, even in the absence of a statutory substitution, which may expressly provide for the assessment of a penalty.[16] Originally, it is true, the fine was imposed as the punishment for a criminal offense. But to insist that it retains that nature is to interpose an objection technical rather than real. It is upon this theory that the prevailing rule, that a money judgment may be imposed in the discretion of the court,[17] seems to be justifiable.

This question is squarely presented in the important case of *Standard Oil Company of Indiana* v. *State of Missouri* (U. S. 1911) 32 Sup. Ct. Rep. 406. In *quo warranto* proceedings against the defendants, for a violation of the Missouri Anti-trust Act, the State court gave judgment ousting the defendants from their franchises and imposing upon each a fine of $50,000. The defendants appealed upon the ground that they had been denied the notice and hearing guaranteed by the due process clause of the Fourteenth Amendment in that the relief granted was not appropriate to the cause of action. This raised the issue whether the power to assess a substantial fine was an inherent characteristic of the *quo warranto* proceeding. The theory of the lower court,[18] that the fine represented damages for breach of the franchise contract, does not establish the proposition that the fine is characteristic of the action, and therefore seems insufficient to overcome the objection of the defendants. The Supreme Court relied rather upon the ground that, especially under the Missouri decisions,[19] the fine was properly exacted as a civil penalty. That requires merely that the fine, although originally a criminal punishment, may be deemed to partake of the changed nature and purposes of the information.

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POSSESSION OF A TENANT AS NOTICE OF HIS LANDLORD'S TITLE.—While the authorities are divided on the question as to whether possession of one other than the vendor raises a *prima facie*[1] or conclusive presumption[2] of notice of his interest in the land, they unanimously recognize the principle that such possession is sufficient to put a purchaser on inquiry as to the equities of the actual occupant. And this is equally

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[15]See Davis *v.* State (1889) 119 Ind. 555.

[16]Bownes *v.* Meehan (1883) 45 N. J. L. 189; State *v.* Baker (1875) 38 Wis. 71.

[17]State *v.* Armour Packing Co. (1902) 173 Mo. 356; see People *v.* Miller (1867) 16 Mich. 205; Stewart *v.* Father Matthew Society (1879) 41 Mich. 67; *contra,* State *v.* Kearn *supra.*

[18]State *v.* Standard Oil Co. *supra,* 360.

[19]State *v.* Bernoudy (1865) 36 Mo. 279; State *v.* Lupton *supra;* State *v.* Armour Packing Co. *supra;* State *v.* Delmar Jockey Club *supra.*

[1]Mainwarring *v.* Templeman (1879) 51 Tex. 205; Rankin Mfg. Co. *v.* Bishop (1902) 137 Ala. 271; Staton *v.* Davenport (1886) 95 N. C. 11.

[2]Williamson *v.* Brown (1857) 15 N. Y. 354; Fair *v.* Stevenot (1866) 29 Cal. 486. The same result, however, is usually reached in either case, since the hardship which would otherwise frequently result from the latter view is generally obviated by invoking the principle of estoppel against an occupant who has deceived the purchaser as to the adverse character of his claim. See Barchent *v.* Selleck (1903) 89 Minn. 513.

true whether the party in possession be a vendee[3] or a mortgagee[4] under an unrecorded deed, a tenant,[5] or a *cestui que trust.*[6] But the unanimity disappears where an attempt is made to charge a purchaser with notice of a landlord's title through the possession of his tenant. In this situation, it is held by the English courts that a purchaser is not even put upon inquiry as to the lessor's title, since a tenant cannot be compelled to disclose to whom he pays rent, and it would be manifestly unjust to impute constructive notice of a fact which might not be discoverable by inquiry.[7] Such a view, however, seems inconsistent with the broad principle laid down above. For if it be admitted that possession of a tenant is constructive notice of all the rights which he enjoys under his lease,[8] then, under the familiar rule that notice of a lease is notice of its contents,[9] the identity of the lessor is disclosed and the situation as far as the purchaser is concerned, becomes the same as if the landlord were himself in possession. It is therefore difficult to perceive any reason why the purchaser should not be bound to continue his investigation until the true nature of the reversionary interest is ascertained.[10] Equity will presume bad faith if his inquiry fall short of this point.[11]

The objection that notice should not be imputed where inquiries might prove unavailing is no doubt due to the prevailing opinion in England that constructive notice is always a conclusive presumption of law.[12] Thus the court, confronted with the dilemma of holding that the possession of a tenant furnished absolute notice of his landlord's interest or no notice at all, preferred to take the latter position to avoid inflicting the hardship which the former would involve.[13] But this difficulty arises through a failure to understand that constructive notice, while clearly a presumption of law as distinguished from an inference of fact,[14] is in many instances none the less rebuttable by competent evidence.[15] It is therefore unnecessary to go to the extent of holding that the possession of a tenant furnishes no notice of his landlord's interest simply as an alternative to regarding it as conclusive. The true solution of these difficulties is found in the intermediate rule that such possession raises a *prima facie* presumption that a purchaser has notice of the rights of the lessor, which may, however, be rebutted by proof that

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[3]Ward *v.* Met. Elevated R. R. (N. Y. 1894) 82 Hun 545; aff'd 152 N. Y. 39.

[4]Parsell *v.* Thayer (1878) 39 Mich. 467.

[5]Hottenstein *v.* Lerch (1882) 104 Pa. 454.

[6]Petrain *v.* Kiernan (1893) 23 Ore. 455.

[7]Hunt *v.* Luck (1901) L. R. 1 Ch. 45; (1902) L. R. 1 Ch. 428.

[8]Cunningham *v.* Pattee (1868) 99 Mass. 248.

[9]Hall *v.* Smith (1807) 14 Ves. 426; 1 Story, Eq. Juris. (13th ed.) § 400.

[10]Dickey *v.* Lyon (1865) 19 Ia. 544; Smith *v.* Heirs of Jackson (1875) 76 Ill. 254; Wade, Notice (1st ed.) § 286.

[11]Deetjen *v.* Richter (1885) 33 Kan. 410.

[12]See Plumb *v.* Fluitt (1791) 2 Anst. 432, 438; Espin *v.* Pemberton (1859) 3 De G. & J. 547, 554; 2 Lead. Cas. in Eq. (7th ed.) 201.

[13]English judges have hesitated to extend the doctrine of constructive notice to doubtful cases. See English etc. Co. *v.* Brunton (1892) 2 Q. B. 700, 708.

[14]2 Pom. Eq. Juris. (3rd ed.) § 606, note 1.

[15]2 Pom. *op. cit.* §§ 604, 606, 623, 624.

proper inquiries failed to discover the adverse claim. Under this theory, the unexplained presence of a stranger upon the land is given its proper significance, and yet any unnecessary hardship which might fall upon the purchaser in cases where the tenant refuses to disclose his landlord's identity is avoided.[16]

A difficult application of these principles was involved in the recent case of *Penrose* v. *Cooper* (Kan. 1912) 121 Pac. 1103, where a tenant of the grantor remained in possession as tenant of the grantee of an unrecorded deed, and the defendant occupied the position of a purchaser without actual knowledge of the deed. The court repudiated the narrow English view, and held that the possession of the tenant was presumptive notice of his new landlord's title. It apparently ignored, however, the fact that the tenancy had commenced prior to the making of the unrecorded conveyance, and that the defendant had knowledge of the original lease. In this situation, the weight of authority favors the rule that the possession of the tenant is not notice of his new landlord's interest in the land, there being no visible change of possession sufficient to put a purchaser upon inquiry.[17] Possession itself is often said to be of sufficient notoriety to give notice of any new rights which may subsequently have arisen in favor of the actual occupant;[18] but where the original claim of the latter has been brought to the knowledge of the purchaser, the better view is to the effect that the presumption of notice arising from possession is rebutted.[19] So a purchaser who knows of a lease from his grantor to the tenant in possession should be entitled to rely upon his information without further inquiry, and to refer the tenant's possession to the previous lease, in the absence of any change of occupancy to arouse his suspicions. The result reached in the principal case, therefore, appears to be too harsh an application of the doctrine of constructive notice.

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THE INTEREST OF THE BENEFICIARY OF A LIFE INSURANCE POLICY.—Although the law of insurance rests primarily on a contract basis,[1] it has frequently shown a tendency to deviate from orthodox contract principles. In its early history, it followed the usual rule in refusing to accord any rights under an insurance policy to one who had paid no consideration.[2] When, however, the anomalous right of the bene-

[16]Trumpower *v.* Marcey (1892) 92 Mich. 529; Wade, *op. cit.* § 286; see Williamson *v.* Brown *supra;* Fair *v.* Stevenot *supra;* 2 Pom. *op. cit.* § 624. But if the presumption is regarded as conclusive, great hardship must result, since an estoppel is personal and cannot be invoked against a landlord on account of the false representations of his tenant.

[17]King *v.* Paulk (1887) 85 Ala. 186; Loughridge *v.* Bowland (1876) 52 Miss. 546; Wahrenberger *v.* Waid (1896) 8 Colo. App. 200; Stockton *v.* Bank (1903) 45 Fla. 590. But see *contra,* holding with the principal case that a change of possession is not necessary. Duncan *v.* Matula (Tex. Civ. App. 1894) 26 S. W. 638; Hannan *v.* Seidentopf (1901) 113 Ia. 658; see Duff *v.* McDonough (1893) 155 Pa. 10.

[18]Daniels *v.* Davison (1809) 16 Ves. 248; Coari *v.* Olsen (1878) 91 Ill. 273; Matthews *v.* Demerritt (1843) 22 Me. 312.

[19]Leach *v.* Ansbacher (1867) 55 Pa. 85; Rogers *v.* Jones (1836) 8 N. H. 264.

[1]Vance, Insurance, § 309.

[2]Bailey *v.* New England Life Ins. Co. (1873) 114 Mass. 177.